

(h)(5)(ii) of this section, the term *net premiums written* does include premiums written for assumption reinsurance and is reduced by assumption reinsurance premiums ceded.

(l) *SHCE*. The term *SHCE* means the Supplemental Health Care Exhibit. The SHCE is a form published by the NAIC that most covered entities are required to file annually under State law.

(m) *United States*. For purposes of paragraph (i) of this section, the term *United States* means the 50 States, the District of Columbia, and any possession of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

(n) *United States health risk*. The term *United States health risk* means the health risk of any individual who is—

(1) A United States citizen;

(2) A resident of the United States (within the meaning of section 7701(b)(1)(A)); or

(3) Located in the United States (within the meaning of paragraph (i) of this section) during the period such individual is so located.

[T.D. 9643, 78 FR 71487, Nov. 29, 2013, as amended by T.D. 9711, 80 FR 10334, Feb. 26, 2015]

§ 57.2T Explanation of terms (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see § 57.2(a) through (b)(2).

(3) *Application of exclusions*—(i) *Test year*. An entity qualifies for an exclusion described in § 57.2(b)(2)(i) through (iv) if it so qualifies in its test year. The term *test year* means either the entire data year or the entire fee year.

(ii) *Consistency rule*. For purposes of paragraph (b)(3)(i) of this section, an entity must use the same test year as it used in its first fee year beginning after December 31, 2014, and in each subsequent fee year. Thus, for example, if an entity used the 2014 data year as its test year for the 2015 fee year, that entity must use the data year as its test year for each subsequent fee year.

(iii) *Special rule for fee year as test year*. For purposes of paragraph (b)(3) of this section, any entity that uses the fee year as its test year but ultimately does not qualify for an exclusion de-

scribed in § 57.2(b)(2)(i) through (iv) for that entire fee year must use the data year as its test year for each subsequent fee year.

(b)(4) through (c)(3)(i) [Reserved]. For further guidance, see § 57.2(b)(4) through (c)(3)(i).

(ii) A person is treated as being a member of the controlled group if it is a member of the group at the end of the day on December 31st of the data year. However, a person's net premiums written are included in net premiums written for the controlled group only if the person would qualify as a covered entity in the fee year if the person were not a member of the controlled group.

(d) through (n) [Reserved]. For further guidance, see § 52.7(d) through (n).

[T.D. 9711, 80 FR 10335, Feb. 26, 2015]

§ 57.3 Reporting requirements and associated penalties.

(a) *Reporting requirement*—(1) *In general*. Annually, each covered entity, including each controlled group that is treated as a single covered entity, must report its net premiums written for health insurance of United States health risks during the data year to the IRS by April 15th of the fee year on Form 8963, "Report of Health Insurance Provider Information," in accordance with the instructions for the form. A covered entity that has net premiums written during the data year is subject to this reporting requirement even if it does not have any amount taken into account as described in § 57.4(a)(4). If an entity is not in the business of providing health insurance for any United States health risk in the fee year, it is not a covered entity and does not have to report.

(2) *Manner of reporting*. The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(3) *Disclosure of reported information*. Pursuant to section 9010(g)(4), the information reported on each original and corrected Form 8963 will be open for public inspection or available upon request.

(b) *Penalties*—(1) *Failure to report*—(i) *In general.* A covered entity that fails to timely submit a report containing the information required by paragraph (a) of this section is liable for a failure to report penalty in the amount described in paragraph (b)(1)(ii) of this section in addition to its fee liability and any other applicable penalty, unless the failure is due to reasonable cause as defined in paragraph (b)(1)(iii) of this section.

(ii) *Amount.* The amount of the failure to report penalty described in paragraph (b)(1)(i) of this section is—

(A) \$10,000, plus

(B) The lesser of—

(I) An amount equal to \$1,000 multiplied by the number of days during which such failure continues; or

(2) The amount of the covered entity's fee for which the report was required.

(iii) *Reasonable cause.* The failure to report penalty described in paragraph (b)(1)(i) of this section is waived if the failure is due to reasonable cause. A failure is due to reasonable cause if the covered entity exercised ordinary business care and prudence and was nevertheless unable to submit the report within the prescribed time. In determining whether the covered entity was unable to submit the report timely despite the exercise of ordinary business care and prudence, the IRS will consider all the facts and circumstances surrounding the failure to submit the report.

(iv) *Treatment of penalty.* The failure to report penalty described in this paragraph (b)(1)—

(A) Is treated as a penalty under subtitle F;

(B) Must be paid on notice and demand by the IRS and in the same manner as a tax under the Internal Revenue Code; and

(C) Is a penalty for which only civil actions for refund under procedures of subtitle F apply.

(2) *Accuracy-related penalty*—(i) *In general.* A covered entity that understates its net premiums written for health insurance of United States health risks in the report required under paragraph (a)(1) of this section is liable for an accuracy-related penalty in the amount described in paragraph

(b)(2)(ii) of this section, in addition to its fee liability and any other applicable penalty.

(ii) *Amount.* The amount of the accuracy-related penalty described in paragraph (b)(2)(i) of this section is the excess of—

(A) The amount of the covered entity's fee for the fee year that the IRS determines should have been paid in the absence of any understatement; over

(B) The amount of the covered entity's fee for the fee year that the IRS determined based on the understatement.

(iii) *Understatement.* An understatement of a covered entity's net premiums written for health insurance of United States health risks is the difference between the amount of net premiums written that the covered entity reported and the amount of net premiums written that the IRS determines the covered entity should have reported.

(iv) *Treatment of penalty.* The accuracy-related penalty is subject to the provisions of subtitle F that apply to assessable penalties imposed under chapter 68.

(3) *Controlled groups.* Each member of a controlled group that is required to provide information to the controlled group's designated entity for purposes of the report required to be submitted by the designated entity on behalf of the controlled group is jointly and severally liable for any penalties described in this paragraph (b) for any reporting failures by the designated entity.

§ 57.4 Fee calculation.

(a) *Fee components*—(1) *In general.* For every fee year, the IRS will calculate a covered entity's allocated fee as described in this section.

(2) *Calculation of net premiums written.* Each covered entity's allocated fee for any fee year is equal to an amount that bears the same ratio to the applicable amount as the covered entity's net premiums written for health insurance of United States health risks during the data year taken into account bears to the aggregate net premiums written for health insurance of United States health risks of all covered entities during the data year taken into account.